





# **Military Rehabilitation and Compensation Amendment (Single Treatment Pathway) Act 2019**

**No. 122, 2019**

***An Act to amend the *Military Rehabilitation and  
Compensation Act 2004*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to amend the *Military Rehabilitation and  
Compensation Act 2004*, and for related purposes**

*[Assented to 12 December 2019]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Military Rehabilitation and Compensation  
Amendment (Single Treatment Pathway) Act 2019*.

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*No. 122, 2019*

*Military Rehabilitation and Compensation Amendment (Single  
Treatment Pathway) Act 2019*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day this Act receives the Royal Assent.	12 December 2019

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Single treatment pathway**

### **Part 1—Main amendments**

#### *Military Rehabilitation and Compensation Act 2004*

##### **1 Section 269**

Omit:

Compensation for the cost of treatment is provided for under Part 2, while treatment itself is provided for under Part 3.

Some people are entitled to treatment, or compensation for the cost of treatment, for any injury or disease. Other people are only entitled to treatment, or compensation for treatment, for a service injury or disease.

Additional compensation for costs incurred in travelling to obtain treatment and MRCA supplement are provided for under Part 4.

substitute:

Part 3 deals with a person's entitlement to treatment. Some people are entitled to treatment for a service injury or disease, while other people are entitled to treatment for any injury or disease.

Part 4 deals with compensation and MRCA supplement. A person may be compensated for the cost of treatment in special circumstances, such as treatment reasonably obtained before the Commission determines that the person is entitled to treatment under Part 3. Compensation for costs incurred in travelling to obtain treatment is also provided for. Part 4 also provides for MRCA supplement for those who are entitled to treatment under Part 3.

##### **2 Part 2 of Chapter 6**

Repeal the Part.

### 3 Section 278

Omit:

Current and former members might be entitled to treatment for a service injury or disease rather than compensation under Part 2 or treatment under the *Defence Force Regulations 1952*.

substitute:

Current and former members might be entitled to treatment for a service injury or disease rather than treatment under regulations made under the *Defence Act 1903*.

### 4 Section 278

Omit “might also be entitled to compensation for costs incurred in travelling to obtain the treatment and MRCA supplement under Part 4”, substitute “might also be entitled under Part 4 to compensation for the cost of treatment reasonably obtained before the Commission determines that the person is so entitled and for costs incurred in travelling to obtain the treatment. MRCA supplement is also payable under Part 4 for those who are entitled to treatment under this Part”.

### 5 Section 279 (heading)

Repeal the heading, substitute:

#### 279 Treatment for members entitled to treatment under Defence regulations

#### 6 Paragraph 279(b)

Omit “the *Defence Force Regulations 1952*”, substitute “regulations made under the *Defence Act 1903*”.

#### 7 Paragraph 279(d)

Omit “the *Defence Force Regulations 1952*”, substitute “those regulations”.

**8 Section 279 (note 1)**

Omit “section 273”, substitute “section 288A”.

**9 Paragraph 280(c)**

Omit “319; and”, substitute “319.”.

**10 Paragraph 280(d)**

Repeal the paragraph.

**11 Section 280 (note 1)**

Omit “section 273”, substitute “section 288A”.

**12 Subsection 281(1) (note 1)**

Omit “section 273”, substitute “section 288A”.

**13 Section 282 (note 1)**

Omit “section 273”, substitute “section 288A”.

**14 Subsections 284(1) and (2) (notes)**

Omit “section 273”, substitute “section 288A”.

**15 Section 288 (before the paragraph relating to Division 2)**

Insert:

<p>Division 1A of this Part provides for compensation for the cost of treatment in special circumstances. This includes treatment that a person reasonably obtains before the Commission determines that the person is entitled to treatment under Part 3 or if the person dies after receiving treatment.</p>
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**16 After Division 1 of Part 4 of Chapter 6**

Insert:

## **Division 1A—Compensation for treatment obtained in special circumstances**

### **288A Compensation for those entitled to treatment under Part 3**

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's injury or disease if:

- (a) the person is entitled to treatment under Part 3 for the injury or disease; and
- (b) the person obtains the treatment before any determination by the Commission that the person is entitled to the treatment under that Part; and
- (c) it was reasonable for the person to obtain the treatment; and
- (d) a claim for compensation in respect of the person has been made under section 319.

### **288B Compensation for treatment prior to a service death**

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's injury or disease if:

- (a) the person dies from the injury or disease after obtaining the treatment; and
- (b) the person's death is a service death for which the Commission has accepted liability; and
- (c) it was reasonable for the person to obtain the treatment in the circumstances; and
- (d) a claim for compensation has been made under section 319 by the person's legal personal representative.

### **288C Compensation in other special circumstances**

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's service injury or disease if:

- (a) the Commission has accepted liability for the service injury or disease; and
- (b) the Commission is satisfied that special circumstances exist in relation to the person and the treatment obtained; and

- (c) a claim for compensation in respect of the person has been made under section 319.

#### **288D Relationship of this Part with other compensation provisions**

- (1) The Commonwealth is not liable to pay compensation under section 288A, 288B or 288C for the cost of treatment if the Commonwealth is liable to pay compensation in respect of the treatment under a section in another Chapter of this Act.
- (2) If a person would be entitled to compensation for the cost of treatment under more than one section in this Division, then the Commonwealth is only liable to pay compensation in respect of the treatment under one of those sections.

#### **288E No compensation if aggravated injury or disease ceases to be aggravated etc.**

The Commonwealth is not liable to pay compensation for the cost of treatment obtained for an aggravated injury or disease if, at the time of the treatment, the aggravation or material contribution had ceased.

#### **288F Amount of treatment compensation**

- (1) The Commission must determine the amount of compensation payable under section 288A, 288B or 288C. The amount must be the amount the Commission considers reasonable for the cost of the treatment for a person's injury or disease. However, the amount must not be more than the amount actually incurred in obtaining the treatment.

Note: The amount determined by the Commission must not take into account increases in the cost of a particular treatment after that treatment has been obtained.

- (2) The amount of compensation for treatment includes the amount reasonably incurred (whether paid or payable) in the necessary replacement or repair of a medical aid used by the person. This may include any reasonable fees or charges of a practitioner, or other qualified person, for a consultation, examination,

prescription, or other service that is reasonably rendered in connection with the replacement or repair.

**288G Whom treatment compensation is payable to**

- (1) Compensation under section 288A, 288B or 288C for the cost of the treatment is payable to:
  - (a) the person who made the claim for compensation; or
  - (b) if that person so directs:
    - (i) the person who provided the treatment; or
    - (ii) any other person who incurred the cost of the treatment.

Note: A special rule applies if a trustee is appointed under section 432.

- (2) A payment under section 288A, 288B or 288C to a person who provided the treatment discharges any liability of any other person for the cost of the treatment to the extent of the payment.

**17 Section 289 (paragraphs (a) and (b) of the definition of *compensable treatment*)**

Repeal the paragraphs, substitute:

- (a) treatment to which a person is entitled under Part 3 (other than under section 280A (treatment for certain injuries covered by the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*)); or
- (b) treatment in respect of which compensation is payable under Division 1A of this Part.

**18 Subsection 305(1) (definition of *treatment under this Chapter*)**

Omit “Part 2”, substitute “Division 1A of Part 4”.

**19 Subparagraphs 306(1)(c)(i) and (3)(b)(i)**

Omit “2 or”.

**20 Section 318**

Omit “The Commission decides under section 327 whether the person should be paid compensation for treatment under Part 2 of Chapter 6 or whether the person should be provided with treatment under Part 3 of Chapter 6”.

**21 Subsection 320(1) (note)**

Omit “section 266 and subsection 271(2)”, substitute “sections 266 and 288B”.

**22 Paragraph 326(c)**

Repeal the paragraph, substitute:

- (c) the person’s medical needs, including but not limited to any treatment (including ongoing treatment) that the person needs or is likely to need.

**23 Section 327**

Repeal the section.

**24 Paragraphs 345(2)(g) and (k)**

Repeal the paragraphs.

## **Part 2—Consequential amendments**

### ***Income Tax Assessment Act 1997***

#### **25 Section 52-114 (table item 19)**

Omit “(sections 271, 272 and 273)”, substitute “(sections 288A, 288B and 288C)”.

### ***Veterans’ Entitlements Act 1986***

#### **26 Paragraph 5H(8)(zz)**

Omit “Part 2 of Chapter 6, or Division 2”, substitute “Division 1A, 2”.

#### **27 Subsections 85A(3) and 85B(3)**

Omit “section 273”, substitute “section 288A”.

## **Part 3—Application and transitional provisions**

### **28 Definitions**

In this Part:

*MRCA* means the *Military Rehabilitation and Compensation Act 2004*.

### **29 Application provisions**

- (1) The amendments of section 280 of the MRCA made by this Schedule apply in relation to:
  - (a) claims for compensation made after the commencement of this Schedule; and
  - (b) claims for compensation made but not determined before the commencement of this Schedule.
- (2) Section 288C of the MRCA, as inserted by this Schedule, applies to claims for compensation made after the commencement of this Schedule, whether the treatment was obtained before or after that commencement.

### **30 Transitional provisions**

- (1) If, immediately before the commencement of this Schedule, a claim for compensation under subsection 271(2) of the MRCA had been made but not determined, the claim is taken, after that commencement, to be a claim for compensation under section 288B of that Act, as inserted by this Schedule.
- (2) If, immediately before the commencement of this Schedule, a claim for compensation under section 273 of the MRCA had been made but not determined, the claim is taken, after that commencement, to be a claim for compensation under section 288A of that Act, as inserted by this Schedule.
- (3) If, before the commencement of this Schedule, the Commission had made a determination under section 327 of the MRCA specifying that section 271 of that Act applies to a person, then, on and after that commencement, the Commission is taken to have determined that section 280 of that Act applies to the person.

### **31 Validating pre-commencement decisions in relation to treatment path**

- (1) This item applies in relation to a thing done before the commencement of this Schedule in relation to the provision of treatment, or compensation for treatment, to a person under Chapter 6 of the MRCA to the extent that the doing of the thing would, apart from this item, be invalid or ineffective because the person was not entitled to the treatment, or the compensation, under that Act.
- (2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the person been entitled to the treatment, or the compensation, under the MRCA as amended by this Schedule.
- (3) However, this item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this Schedule, to the extent that those rights or liabilities arose from, or were affected by, a thing done as described in subitem (1).

### **32 Payments for certain treatment provided before commencement**

- (1) This item applies if:
  - (a) the Commonwealth paid an amount to a person for providing treatment or other services under Chapter 6 of the MRCA before the commencement of this Schedule; and
  - (b) that amount:
    - (i) was not payable to the person under that Chapter at that time; but
    - (ii) would have been payable under that Chapter if the amendments made by this Schedule had been in force at that time.
- (2) The Commonwealth may recover the amount already paid to the person as a debt.
- (3) The person is entitled, on the commencement of this Schedule, to be paid an amount equal to the amount already paid to the person by the Commonwealth.

- (4) The Commonwealth may set off the amount already paid to the person against the amount that the person is entitled to be paid.
  - (5) Payments of amounts under subitem (3) are taken, for the purposes of section 423 of the MRCA, to be payments for treatment and other services provided under Chapter 6 of that Act.
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*[Minister's second reading speech made in—  
House of Representatives on 4 July 2019  
Senate on 16 September 2019]*

**(96/19)**

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